

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File Number: EB-09-MA-0176
)	
Nounoune Lubin)	NAL/Acct. No: 201032600004
)	
North Miami, Florida)	FRN: 0020172136
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 1, 2010**Released: September 2, 2010**

By the Resident Agent, Miami Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Nounoune Lubin (“Ms. Lubin”) apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (“Act”),¹ by operating an unlicensed radio transmitter on the frequency 90.1 MHz in North Miami, Florida. We conclude, pursuant to Section 503(b) of Act,² that Ms. Lubin is apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000).

II. BACKGROUND

2. On September 9, 2009, and again on October 22, 2009, in response to a complaint of an unlicensed station operating on 90.1 MHz in the North Miami area, agents from the Enforcement Bureau’s Miami Office (“Miami Office”) used direction-finding techniques to locate the source of broadcast transmissions on 90.1 MHz to Ms. Lubin’s residence in North Miami, Florida. On September 9, 2009, the agents took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Rules³ and therefore required a license. On October 22, 2009, the agents from the Miami Office traced coaxial cable from an antenna mounted to a mast in the backyard of Ms. Lubin’s residence into her apartment unit. A review of the Commission’s records revealed that Ms. Lubin did not have a license for the operation of a radio station on 90.1 MHz in North Miami, Florida.

3. On November 6, 2009, the Miami Office issued a *Notice of Unlicensed Operation* (“NOUO”) to Ms. Lubin for operating an FM broadcast station on the frequency 90.1 MHz from her residence in North Miami, Florida without a license. The NOUO warned that unlicensed operation of a radio station violated the Act and the Commission’s rules (“Rules”), and that continued operation could subject her to further enforcement action. The Miami Office received a return receipt for the NOUO signed by Ms. Lubin. We note that this is the second NOUO issued by the Miami Office to Ms. Lubin for

¹ 47 U.S.C. § 301.

² 47 U.S.C. § 503(b).

³ Section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 µV/m at three meters. 47 C.F.R. § 15.239. The measurements made on September 9, 2009, indicated that the signal was 7,746 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

operation of an unlicensed FM broadcast station on 90.1 MHz.⁴ The *First NOUO*, issued on March 5, 2008, involved Ms. Lubin's unlicensed operation of a radio station from a prior residence in North Miami, Florida.

4. On April 22, 2010, and again on May 12, 2010, agents from the Miami Office used direction-finding techniques to locate the source of broadcast transmissions on 90.1 MHz to Ms. Lubin's residence in North Miami, Florida. On April 22, 2010, the agents took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Rules⁵ and therefore required a license. A review of the Commission's records again revealed that Ms. Lubin did not have a license for the operation of a radio station on 90.1 MHz in North Miami, Florida.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.⁶ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁷

6. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act.⁸ On two separate occasions – March 5, 2008 and November 6, 2009 – Ms. Lubin was sent a NOUO warning that unlicensed operation of a radio station on 90.1 MHz violated the Act and could subject her to further enforcement action, including a substantial monetary forfeiture. Although Ms. Lubin acknowledged receipt of both NOUOs, agents from the Miami Office determined on four occasions subsequent to the *First NOUO* (September 9, 2009, October 22, 2009, April 22, 2010, and May 12, 2010), that Ms. Lubin operated an unlicensed radio station on 90.1 MHz from her residence in North Miami, Florida. In addition, a review of the Commission's records revealed that Ms. Lubin did not have a license to operate a radio station on 90.1 MHz in North Miami, Florida. Based on the facts and circumstances described above, we find that the apparent violation was willful. Moreover, because agents observed Lubin's unlicensed operation on four separate occasions, we find that the apparent violation was repeated.

⁴ *Notice of Unlicensed Operation* (Enf. Bur., Miami Office, rel. March 5, 2008) ("*First NOUO*"). The Miami Office received a return receipt for the *First NOUO* signed by Ms. Lubin.

⁵ 47 C.F.R. § 15.239. The measurements made on April 22, 2010, indicated that the signal was 6,757 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

⁶ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

⁷ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁸ 47 U.S.C. § 301.

7. Based on the evidence before us, we find that Ms. Lubin apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without Commission authorization on the frequency 90.1 MHz from her residence in North Miami, Florida on September 9 and October 22, 2009, and on April 22 and May 12, 2010.

8. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.⁹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁰ We find Ms. Lubin's misconduct particularly egregious because she operated an unlicensed radio station on several different occasions with full knowledge that such activity violated the Act and the Rules. Thus, we find that an upward adjustment in the forfeiture amount is warranted.¹¹ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Ms. Lubin is apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000).

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314, and 1.80 of the Commission's Rules, Nounoun Lubin is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violation of Section 301 of the Act.¹²

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Nounoun Lubin **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, check, or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625,

⁹ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ See 47 C.F.R. § 1.80(b)(4).

¹² 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80.

Washington, D.C. 20554.¹³ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Ms. Lubin shall also send electronic notification to SCR-Response@fcc.gov on the date said payment is made.

12. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Miami Office, PO Box 520617, Miami, FL 33152, and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to SCR-Response@fcc.gov.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability* for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Nounoune Lubin at her address of record.

FEDERAL COMMUNICATIONS COMMISSION

Steven DeSena
Resident Agent
Miami Office
South Central Region
Enforcement Bureau

¹³ See 47 C.F.R. § 1.1914.